

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

ANDREW NOEL

PLAINTIFF

VS.

CIVIL ACTION NO. 4:07cv167-JCS

PATRICIA BLACK and
WILLIE BOOKERT

DEFENDANTS

MEMORANDUM OPINION AND ORDER

Plaintiff, a state inmate incarcerated at East Mississippi Correctional Facility (EMCF) brought this action pursuant to § 1983 alleging that Defendants violated his constitutional rights under the Eighth Amendment by failing to provide him with adequate clothing. Presently before the court is Defendants' motion for summary judgment. Having considered the motion, Plaintiff's response, and Defendant's rebuttal, the court concludes that the motion should be granted.

Defendants' motion for summary judgment is supported by the affidavit of Clark Puckett, the business manager for EMCF. Attached to the affidavit are those portions of Plaintiff's prison file reflecting the clothing and other items issued to him since he transferred to EMCF in July of 2004. In August of 2005, he was issued 3 t-shirts. A new pair of shoes was issued to Noel in February of 2006. In July of 2006 Plaintiff received two pairs of pants, two shirts, three pairs of underwear, three pairs of socks, and three t-shirts. He was issued new shoes in August of 2006, October of 2007, and August of 2008. A State Issue Form dated November of 2008 indicates that he received two pairs of pants, two shirts, two pairs of underwear, two pairs of socks, and two t-shirts at that time.

Plaintiff's canteen records support Defendants' position that Plaintiff has not been in need of clothing. Since his arrival at EMCF, Noel has spent approximately \$4,865.00 at the commissary. Of this amount, only approximately \$22.00 has been spent by him for clothing. The remainder of his purchases have been for items such as snacks, candy, roll papers, toiletries, batteries and sugar.

Plaintiff has offered no evidence in response to Defendants' motion. Rather, he simply argues that he was entitled to additional state-issued clothing.

In order to succeed on his Eight Amendment claim, Plaintiff must establish that Defendants denied him "the minimal civilized measure of life's necessities." *Palmer v. Johnson*, 193 F.3d 346, 352 (5th Cir. 1999) (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). Plaintiff has failed to come forward with credible evidence sufficient to raise a genuine factual issue as to any such denial. Accordingly, the court concludes that Defendants are entitled to judgment as a matter of law.

For these reasons, Defendants' motion for summary judgment is hereby granted. A separate judgment will be entered pursuant to Rule 58 of the Federal Rules of Civil Procedure.

SO ORDERED, this the 29th day of June, 2009.

/s/ James C. Sumner
UNITED STATES MAGISTRATE JUDGE